

CALIFORNIA COASTAL COMMISSION

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W19b

Filed:	11/4/2002
49-day waiver rcvd:	11/14/2002
Staff:	S.Craig
Staff report:	12/19/2002
Hearing date:	1/8/2003

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal numberA-3-STC-02-089; Seaside Company Heritage Tree Trimming
Applicant.....Santa Cruz Seaside Company
Appellant.....Gillian Greensite
Local government.....City of Santa Cruz
Local decisionApproved with conditions (September 24, 2002)
Project location.....201 West Cliff Drive, Santa Cruz (APN 004-091-21).
Project descriptionTrimming of Seven Heritage Trees on a Commercial Property
File documents.....City of Santa Cruz Certified Local Coastal Program (LCP); City of Santa Cruz Coastal Development Permit Application File 02-032
Staff recommendation ...No Substantial Issue

EXECUTIVE SUMMARY

The City of Santa Cruz approved the trimming of seven heritage trees along West Cliff Drive, between the first public road and the sea. The crowns of six of the seven trees will be trimmed approximately 40 percent; the remaining tree will be trimmed less than 25 percent.

The Appellant contends that the approved tree trimming will: (1) damage the trees and render them ugly and unsafe, and; (2) degrade the visual and aesthetic values of the surrounding area, including views between the sea and the first public roadway paralleling the sea.

These contentions do not raise a substantial issue of conformity of the approved project with the certified LCP. First, the City-approved project includes crown restoration, which is a method approved by the International Society of Arboriculture and which is intended to improve the structure and appearance of trees that have been previously topped. Also, the Applicant has abided by all the required regulations of the certified Heritage Tree Ordinance regarding trimming of trees. In addition, the City-approved project will have no effect on views between the first public roadway and the sea. Also, the City is requiring that the Applicant retain all the trees on the property, consistent with the Community Design Policies of the LCP that require preservation of natural features that provide definition to an area, and minimization of tree removal between the first public road and the sea.

Staff recommends that the Commission, after conducting the public hearing, determine that **no**



California Coastal Commission
January 2003 Meeting in Los Angeles

Staff: S.Craig Approved by:

A-3-STC-02-089 Sea & Sand Tree Trimming (Seaside Co.) stfrpt 12.19.02.doc

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substantial issue exists with respect to this project’s conformance with the certified City of Santa Cruz Local Coastal Program (LCP) and declines to take jurisdiction over the coastal development permit for the project.

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Exhibits:

Exhibit 1: Appeal Text

Exhibit 2: City’s Resolution, Findings, & Conditions

Exhibit 3: Local Map

Exhibit 4: International Society of Arboriculture Document

Exhibit 5: City’s Urban Forester Letter

Exhibit 6: Rendition of Tree Trimming

Exhibit 7: Arborist Report

Exhibit 8: Correspondence

1.0 SUMMARY OF APPELLANT’S CONTENTIONS

The Appellant contends that trimming of the seven heritage trees will negatively impact coastal views from various points within the City of Santa Cruz, including views from the municipal wharf and along West Cliff Drive. The Appellant also contends that the City was incorrect to state that “views between the sea and the first public roadway will be improved with the trimming of the trees,” and that the topped trees will become dense and bushy, blocking the views from the adjacent apartments. The Appellant also contends that the approved tree-trimming project will use a topping or heading method that will drastically reduce the height of the trees and that this practice is condemned by Current International Society of Arboriculture (ISA), by State legislative declaration, and by a registered consulting arborist, and that this practice is defined as “damage” under the City’s Heritage Tree Ordinance, and that the trimming will render the trees ugly and unsafe. Please see Exhibit 1 for the text of the appeal.



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2.0 APPEAL PROCEDURES

2.1 Filing of Appeals

On September 24, 2002, the City Council of Santa Cruz approved the proposed project subject to multiple conditions (see Exhibit 2 for the City Council's resolution, findings and conditions on the project). Adequate notice of the City Council's action on the CDP was received in the Commission's Central Coast District Office on Monday, October 21, 2002. The Commission's ten-working-day appeal period for this action began on Tuesday, October 22, 2002 and concluded at 5:00 P.M. on Monday, November 4, 2002. One valid appeal (see below) was received during the appeal period.

In accordance with the Commission's regulations, staff notified the City of Santa Cruz of the appeal and requested all relevant documents and materials regarding the subject permit, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. Section 13112 of the Commission's regulations provides that upon receipt of a notice of appeal, a local government shall refrain from issuing a coastal development permit (CDP) and shall deliver to the Executive Director all relevant documents and materials used by the local government in consideration of the CDP application. The City permit file information was received on November 13, 2002.

Pursuant to Section 30261 of the Coastal Act, the appeal hearing must be set within 49 days from the date that an appeal is filed. The 49th day from the appeal filing date was December 23, 2002. On November 14, 2002 the Applicant's representative waived the Applicant's right for a hearing to be set within the 49-day period, to allow Commission staff sufficient time to review the project information and the Appellant's contentions.

2.2 Appeals Under the Coastal Act

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. The project is appealable because it is located between the sea and the first public road paralleling the sea and is also within 300 feet of the top of the seaward face of a coastal bluff.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the approved development is in conformity with the certified



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local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the nearest public road and the sea and thus, this additional finding needs to be made in a *de novo* review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the *de novo* stage of an appeal.

3.0 STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-3-STC-02-089 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of **No Substantial Issue**, and the adoption of the following resolution and findings and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. **A-3-STC-02-089** presents no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

4.0 RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

4.1 Project Description & Background

The approved tree-trimming site is located along the bluff top behind the two-story Sea & Sand Inn at the north end of West Cliff Drive (see Exhibit 3). The trees consist of a small grove of eucalyptus and range in height from 45 feet to 60 feet with a diameter at breast height of 35 to 78 inches. The trees have been previously topped on a number of occasions, which has caused poor scaffold (lateral limb) growth and weight distribution. The purpose of the tree trimming is to rectify the results of previous topping



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episodes and to reduce the height and density of the trees to reduce the likelihood of felling of the trees or portions of the trees during windstorms.

The size of the trees qualifies them as heritage trees under the City's certified Heritage Tree Ordinance. The approved tree-trimming project would include trimming of six of the trees up to 40 percent and the seventh tree less than 25 percent. Heritage Tree Ordinance Section 9.56.060 requires a coastal development permit for any work affecting 25 percent or more of the crown of any heritage tree. In addition, Section 24.08.230.1(12a) of the certified Zoning Ordinance requires a coastal development permit for any tree trimming not subject to the heritage tree provisions if the tree is located seaward of the first public road paralleling the sea, which is the case for this project. For these reasons, the proposed trimming of the seven trees requires a coastal development permit.

Two geology evaluations were performed of the bluff top area. Neither report stated that the trees were significantly altering the rate of bluff top retreat. However, both reports note that eventually the trees will fall, although the timeframe for this event could range from today to 20 to 30 years from now. The City, however, determined that none of the trees should be removed at this time and that tree trimming, rather than tree removal, was preferable to address the Applicant's concerns regarding safety.

4.2 City Action

On August 6, 2001 the Applicant applied to the City Parks and Recreation Department for heritage tree permits to remove three of the eucalyptus trees and trim the remaining four trees. Parks and Recreation staff concluded that the trees were healthy and vigorous and recommended denial of a permit to remove the three eucalyptus trees and recommended that the trees be pruned more than 25% for crown and weight reduction. The heritage tree application was forwarded to the Planning Department for a coastal development permit. The final application did not propose the removal of any trees but rather the trimming of six of the trees up to 40 percent and trimming of the seventh tree less than 25 percent. The Applicant submitted an arborist report that included recommendations on the health and management of the trees (see Exhibit 7). The application was heard before the Zoning Administrator on May 1, 2002 and May 15, 2002. The Zoning Administrator approved the project on May 15, 2002. Two appellants appealed the Zoning Administrator's approval to the Planning Commission. The appellants were concerned with the trimming methods proposed and the amount of canopy to be removed. In response to these concerns, the City's Urban Forester consulted with other professional arborists regarding the proposed method and the extent of the trimming. To ensure that the trees would be trimmed and managed within the specifications of the Best Management Practices of the International Society of Arboriculture, the City's Urban Forester created pruning specifications for each tree and presented this plan to the Planning Commission during the hearing on July 18, 2002. The Planning Commission approved the coastal and heritage tree permits, thus upholding the Zoning Administrator's approval and denying the appeals. This approval included a modified condition that required the tree trimming to be performed by a City-approved arborist per the City's Urban Forester's pruning recommendations.

The appellants appealed the Planning Commission's approval to the City Council, with the same concern regarding the extent of the trimming and the methodology proposed. On September 24, 2002



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the City Council approved the tree-trimming project, without change to the conditions placed on the project at the Planning Commission level.

4.3 Standard of Review

The City of Santa Cruz has a certified Local Coastal Program (LCP). The standard for review of coastal permits in the City of Santa Cruz is the certified LCP. The LCP includes chapter 9.56 of the City's Zoning Ordinance (The Heritage Tree Ordinance), which provides for the preservation of heritage trees and heritage shrubs.

5.0 SUBSTANTIAL ISSUE ANALYSIS

5.1 Damage to Heritage Trees

LCP Community Design Policy 6.1.1 states:

Community Design Policy 6.1.1: *Protect Heritage Trees and Shrubs by reviewing all construction plans to determine their impacts on Heritage Trees or Shrubs and providing technical information to assist owners in maintaining Heritage Trees and Shrubs on private property.*

Applicable LCP Heritage Tree Zoning Ordinances are as follows:

9.56.040 (in part): *Any tree, grove of trees, shrub or group of shrubs, growing on public or private property within the city limits of Santa Cruz which meet(s) the following criteria shall have the "heritage" designation: (a) Any tree which has a trunk with a circumference of forty-four inches (approximately fourteen inches in diameter or more), measured at fifty-four inches above existing grade...*

9.56.010 (d): *"Damage" shall mean any action undertaken which alters the existing state of any heritage tree or heritage shrub in any way. This shall include, but is not limited to, the cutting, topping, girdling, or poisoning of any heritage tree or heritage shrub, any trenching or excavating near any heritage tree or shrub, or any action which may cause death, destruction or injury to any heritage tree or heritage shrub, or which places any heritage tree or heritage shrub in a hazardous condition or in an irreversible state of decline.*

9.56.060(a): *No person shall prune, trim, cut off, or perform any work, on a single occasion or cumulatively, over a three-year period, affecting twenty-five percent or more of the crown of any heritage tree or heritage shrub without first obtaining a permit pursuant to this section. No person shall root prune, relocate or remove any heritage tree or heritage shrub without first obtaining a permit pursuant to this section.*

9.56.060(f): *Where three or more heritage trees or three or more heritage shrubs are the subject of any proposed work to be performed, the director shall require that the applicant sign an agreement for preparation and submission of a consulting arborist report. As part of said*



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agreement, the applicant shall be required to deposit with the department an amount of money equal to the estimated cost of preparing the report, as contained in said agreement.

9.56.100(b) *Any person who alters, damages, destroys, or removes any heritage tree or heritage shrub on public or private property without an approved permit issued pursuant to this chapter shall be liable to the city for the cost of replacement of said heritage tree or shrub pursuant to the unapproved heritage tree and heritage shrub alteration, damage, or removal mitigation requirement chart adopted by city council resolution. In addition, all violations are subject to the penalties prescribed by Section 9.56.110 of this chapter.*

The Appellant contends that the approved tree-trimming project will use a topping or heading method that will drastically reduce the height of the trees and that the trees will be rendered ugly and unsafe. The Appellant also contends that topping is condemned by current International Society of Arboriculture (ISA) standards, by State legislative declaration, and by a registered consulting arborist, and that this practice is defined as “damage” under the City’s Heritage Tree Ordinance. Please see Exhibit 1 for the text of the appeal.

The ISA defines “topping” as “the indiscriminate cutting back of tree branches to stubs or lateral branches that are not large enough to assume the terminal role.” Topping is unhealthy for trees for a variety of reasons. Topping often removes 50-100% of the leaf-bearing crown of a tree. Because the leaves are the “food factories” of a tree, topping can temporarily starve a tree until new leaves develop. This stress can make a tree more vulnerable to insect and disease infestations, as well as decay.

The approved tree-trimming project calls for reduction of the crowns of six trees by 40% and up to 25% for the remaining tree. The project, however, does not involve topping. Instead, the approved project will use a technique called crown restoration, which is approved by the ISA. Crown restoration is recommended by the ISA to restore trees that have been previously topped or damaged. Please see Exhibit 4 for the ISA’s description of crown restoration and Exhibit 5 for the City’s description of the approved crown restoration process.

The trees at the Sea & Sand Inn previously have been topped on a number of occasions. This has resulted in reduction of interior scaffolding, or lateral branches, and has caused the trees to develop mostly vertical branches, which is known as a “lion tail effect.” This causes the majority of the weight of the foliage to be located at the end of the limbs, leaving them prone to failure. The City has developed individual pruning specifications based upon the ISA-approved crown restoration guidelines. According to the City’s Urban Forester, “Proper management of these trees will be required to restore these previously damaged trees to some degree of proper tree form while lessening a potential for unsafe conditions including large diameter limb or entire tree failure” (see Exhibit 5). To be effective, crown restoration pruning will need to be done at frequent intervals, with a minimum of two prunings in the next five years. The City’s Urban Forester has provided specific recommendations for crown restoration of six of the seven eucalyptus trees (tree #7 will require a minimum amount of work totaling less than 25% of the foliar canopy), with two phases of restoration recommended (see Exhibit 5, pp. 3-4). This is consistent with Community Design Policy 6.1.1, which requires that the City protect heritage trees by



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providing technical information to assist owners in maintaining heritage trees on private property. In addition, the City conditioned its approval to require that the tree trimming be performed per these recommendations of the City's Urban Forester. The City also conditioned its approval to require that a Certified Arborist be on-site during all tree-trimming activities and that the contracted arborist shall consult on-site with the City's Urban Forester and review the specific trimming recommendations and canopy restoration plans for each tree prior to commencement of any tree trimming. In addition, the contracted arborist is required to meet with the City's Urban Forester at the beginning, the midpoint, and at the completion of the trimming of each tree to ensure that all work is performed per specifications (see Exhibit 2, pg. 4 for the City's conditions of approval).

Although the crown restoration is a method supported by the ISA, certified Heritage Tree Ordinance Section 9.56.010(d) defines damage, in part, as "*any* action undertaken which alters the existing state of any heritage tree or heritage shrub in *any way*...(emphasis added). Under this definition, it is possible to define *any* alteration or pruning of trees, including crown restoration, as "damage." However, the ISA web site states..."if people and trees are to coexist in an urban or suburban environment, then we sometimes have to modify the trees. City environments do not mimic natural forest conditions. Safety is a major concern. Also we want trees to complement other landscape plantings and lawns. Proper pruning, with an understanding of tree biology, can maintain good tree health and structure while enhancing the aesthetic and economic values of our landscapes." As stated above, the purpose of the tree trimming is to rectify the results of previous topping episodes and to reduce the height and density of the trees to reduce the likelihood of felling of the trees or portions of the trees during windstorms. Given that these trees are located in an urbanized area of the City and that the Applicant has concerns regarding safety and thus wishes to reduce the height and weight of the trees, appropriate pruning is reasonable.

Regarding the LCP's definition of "damage" to heritage trees, it should be noted Zoning Ordinance Section 9.56.100(b) provides penalties for persons who *alter* or damage trees *without a permit* (emphasis added). In this case the Applicant abided by all the regulations of the Heritage Tree Ordinance, including Zoning Ordinance Section 9.56.060(a), which requires obtaining a permit for any work affecting 25% or more of the crown of a tree, and Zoning Ordinance 9.56.060(f), which requires the consultation of an arborist where three or more heritage trees are subject to any proposed work. Thus, the City's LCP allows altering of heritage trees as long as the City has reviewed the proposed project carefully and provided safeguards to best protect the trees during any trimming or pruning process.

In summary, the approved tree-trimming project will follow the recommended crown restoration guidelines of the ISA, which will reduce the likelihood of limb or entire tree failure. In addition, the City conditioned its approval to require that the City's Urban Forester's specific recommendations be followed during the crown restoration process; also, the City's Urban Forester will monitor the trimming activities throughout the process. Finally, the Applicant went through the appropriate permit process as required in the City's certified Heritage Tree Ordinance. Therefore, the appeal raises no substantial issue in regard to conformity of the approved tree trimming with the Community Design policies and the Heritage Tree Ordinance of the certified City of Santa Cruz LCP regarding protection of heritage trees.



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5.2 Visual Impacts

Applicable City of Santa Cruz LCP policies regarding protection of significant vegetation are as follows:

Community Design LUP Policy 2.1: *Preserve natural features providing definition to an area within the City.*

Community Design Policy 6.1: *Protect existing significant vegetation and landscaping that provides scenic as well as wildlife habitat and forage value.*

Community Design Policy 6.1.4: *Minimize tree cutting between the nearest through public road and the coast.*

Applicable LCP Zoning Ordinances are as follows:

9.56.040 (in part): *Any tree, grove of trees, shrub or group of shrubs, growing on public or private property within the city limits of Santa Cruz which meet(s) the following criteria shall have the “heritage” designation: (a) Any tree which has a trunk with a circumference of forty-four inches (approximately fourteen inches in diameter or more), measured at fifty-four inches above existing grade...*

24.08.250(1): *Maintain views between the sea and the first public roadway parallel to the sea.*

The Appellant contends that the seven heritage trees are of outstanding visual and aesthetic value and that their stature softens the mass and height of the West Coast Santa Cruz Hotel and the tall apartments at 200 West Cliff Drive. The Appellant also contends that the City’s LCP has provisions to protect coastal views and visual quality and that the trimming will render the trees ugly. In addition, the Appellant contends that the City’s resolution stating, “views between the sea and the first public roadway will be improved with the trimming of the trees” is inaccurate and that the trees will become dense and bushy and block views from the adjacent apartments. Please see Exhibit 1 for the text of the appeal.

The seven eucalyptus trees are large in size and do add to the visual landscape of the area, especially as seen from the beach or the municipal wharf. Thus, the trees do provide some scenic value, which must be protected consistent with Community Design Policy 6.1. The trees also provide some screening of the apartments adjacent to the Sea & Sand Inn, as seen from the beach or the wharf (see Exhibit 1, page 10, top photo). However, because the height of the trees, as seen from these areas, extends greatly above the adjacent apartments, 40 percent crown removal will still provide the same amount of screening of the buildings. The Appellant also contends that the trees soften the mass and the height of the West Coast Santa Cruz Hotel (see again Exhibit 1, page 10, top photo). However, the trees have little visual impact on the West Coast Santa Cruz Hotel given that they are located upcoast from the hotel and thus provide no direct screening of the hotel building.

Zoning Ordinance 24.08.250(1) requires that views between the sea and the first public roadway parallel



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to the sea be maintained. The trees are located between the Sea & Sand Inn and the bluff top. The Sea & Sand Inn, which is located between the first public road and the sea, blocks views of the ocean from West Cliff Drive. The City made the finding that the views between the sea and the first public roadway parallel to the sea will be improved with the trimming of the trees and their improved maintenance (see Exhibit 2, pg. 1). The City's rationale is that the trees will be subjectively more aesthetically pleasing after pruning. Zoning Ordinance 24.08.250(1), however, is protective of *ocean* views. The Sea & Sand Inn blocks the view of the ocean from West Cliff Drive. Thus, the trimming of the trees will have *no effect* on views between the first public road and the sea in this area. In addition, the Appellant contends that the trees will become dense and bushy and block views from the adjacent apartments. Private views, however, are not protected in the LCP.

Community Design Policies 2.1 and 6.1.4 require the preservation of natural features that provide definition to an area, and minimization of tree removal between the first public road and the sea. The Applicant's initial application to the City included removal of three of the seven trees and trimming of the remaining four trees. The City, however, denied removal of any of the trees and instead recommended crown restoration to address the Applicant's safety concerns. Thus the City is preserving and minimizing cutting of trees between the first public road and the sea, consistent with Community Design Policies 2.1 and 6.1.4.

The Appellant also contends that the tree trimming will render the trees "ugly." As discussed above in section 5.1 of the staff report, the Appellant contends that the proposed tree trimming consists of topping, which is damaging to trees and could result in the trees becoming "ugly." The City-approved project, however, includes crown restoration. Exhibit 6 shows an estimated rendition of the shape of one of the trees after crown restoration. The rendition provided shows that the resulting trimming will mimic the natural form of a tree. Also, crown restoration, according to the International Society of Arboriculture, is intended to improve the structure and appearance of trees that have sprouted vigorously after being topped (see Exhibit 4). Thus, the proposed trimming should actually enhance the appearance of the trees, rather than worsening their appearance.

In summary, the approved tree trimming will not affect views between the first public road and the sea, consistent with Zoning Ordinance 24.08.250(1). The trees, after trimming, will continue to be a significant part of the natural scenic landscape, consistent with Community Design Policy 6.1, and will continue to provide partial screening of the apartments adjacent to the Sea & Sand Inn. Also, all seven trees will be preserved on the site, consistent with Community Design Policies 2.1 and 6.1.4. Finally, the crown restoration process will improve the structure and appearance of these previously topped trees. Therefore, the appeal raises no substantial issue in regard to conformity of the approved tree trimming with the Community Design policies and Zoning Ordinance Section 24.08.250(1) of the certified City of Santa Cruz LCP regarding protection of landscaping that provides scenic value.



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